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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

James Coyne and Michael Coyne, *on behalf of
themselves and all others situated,*

Plaintiffs,

v.

GOOGLE LLC, *a Delaware Limited Liability
Company,*

Defendant.

Case No.

CLASS ACTION

1 **INTRODUCTION**

2 1. Plaintiffs James Coyne and Michael Coyne bring this class action against Google
3 LLC for damages and injunctive relief related to Google’s policy of providing third-party
4 developers with privileged access to the email inboxes of users of its Gmail email platform.

5 2. By providing this type of access to developers, Google allowed third parties to
6 view and read users’ personal emails, even though those users had not provided consent for Google
7 to provide such access.

8 3. Users have thus sustained damages as personal, private information has been
9 exposed to third parties without their consent.

10 **JURISDICTION AND VENUE**

11 4. This Court has subject-matter jurisdiction pursuant to the Class Action Fairness
12 Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action in which the matter in
13 controversy exceeds the sum of \$5,000,000, and Google is a citizen of a State different from that of
14 at least one Class member.

15 5. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because
16 Google’s principal place of business is located in this District and substantial parts of the events or
17 omissions giving rise to the claims occurred in the District. Venue is also proper in this Court
18 because Google’s terms of service require causes of action to be brought in federal or state courts in
19 this District, Google is located here, the causes of action arose here, and the representations
20 described herein emanated from Google’s principal place of business located within this District.

21 **PARTIES**

22 **A. Plaintiffs**

23 6. Plaintiff James Coyne is a resident and citizen of the State of Ohio. Plaintiff
24 James Coyne created his free Gmail email account in approximately September 2009. Google
25 provided third-party developers with privileged access to Plaintiff’s email inbox without his
26 knowledge or consent. As a result, Plaintiff suffered damages as his personal, private information
27 has been exposed to third-parties without his consent.

1 7. Plaintiff Michael Coyne is a resident and citizen of the State of Ohio. Plaintiff
2 Michael Coyne created his free Gmail email account in approximately December 2009. Google
3 provided third-party developers with privileged access to Plaintiff’s email inbox without his
4 knowledge or consent. As a result, Plaintiff suffered damages as his personal, private information
5 has been exposed to third-parties without his consent.

6 **B. Defendant**

7 8. Google LLC is a Delaware Limited Liability Company with its principal place of
8 business in Mountain View, California.

9 9. Google is a subsidiary of Alphabet Inc., an American multinational conglomerate
10 also headquartered in Mountain View, California. The two founders of Google—Larry Page and
11 Sergey Brin—serve as its CEO and President, respectively.

12 10. Throughout the events at issue here, Google has operated through its directors,
13 officers, employees and agents, and each such person acted within the course and scope of such
14 agency, representation or employment and was acting with the consent, permission and
15 authorization of Google.

16 11. Google has uniform Terms of Service for each of its users, which provide that
17 California law applies to all disputes.

18 The laws of California, U.S.A., excluding California’s conflict of laws rules, will apply to any
19 disputes arising out of or relating to these terms or the Services. All claims arising out of or
20 relating to these terms or the Services will be litigated exclusively in the federal or state courts
of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction
in those courts.¹

21 12. The application of California law to all of the Class members’ claims is fair,
22 appropriate, and an election affirmatively made by Google consistent in its Terms of Service.

23 13. Beyond Google’s election of California law to govern the claims described
24 herein, the State of California has a significant interest in regulating the conduct of businesses
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27
28 ¹ Google Terms of Service, <https://policies.google.com/terms> (last visited July 4, 2018).

1 operating within its borders. California, which seeks to protect the rights and interests of California
2 and all residents and citizens of the United States against a company headquartered and doing
3 business in California, has a greater interest in the claims of Plaintiffs and Class members than any
4 other state or country and is most intimately concerned with the claims and outcome of this
5 litigation.

6 14. Application of California law with respect to Plaintiffs' and Class members'
7 claims is neither arbitrary nor fundamentally unfair because California has a state interest in the
8 claims of the Plaintiffs and the Class based upon Google's significant and ongoing contacts with
9 California.

10 15. Under California's choice of law principles, which are applicable to this action,
11 the common law of California applies to the common law claims of all Class members.
12 Additionally, given California's significant interest in regulating the conduct of businesses
13 operating within its borders, California's consumer protection laws may be applied to non-resident
14 Plaintiffs and Class members.

15 **SUBSTANTIVE ALLEGATIONS**

16 16. Gmail is a free email service developed by Google LLC. With 1.2 billion active
17 users worldwide, it is one of the most popular email applications for American consumers.

18 17. Google represents to its users that it takes security and privacy seriously: "If your
19 data is not secure, it is not private." Touting the encryption that Google uses to "keep[] your data
20 private while in transit," Google represents that, "[w]hen you do things like send an email. . . the
21 data you create moves between your device, Google services, and our data centers. We protect this
22 data with multiple layers of security, including encryption technology like HTTPS and Transport
23 Layer Security."²

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28 ² Google Privacy, Your Security, available at https://privacy.google.com/your-security.html?categories_activeEl=sign-in (last accessed July 4, 2018).

1 18. Responding to concerns about machine-based scanning code used to target
2 personalized advertisements to its users, Google announced in June 2017 that it would no longer
3 use email as “input for ads personalization”:

4 G Suite’s Gmail is already not used as input for ads personalization, and Google has decided
5 to follow suit later this year in our free consumer Gmail service. Consumer Gmail content will
6 not be used or scanned for any ads personalization after this change. This decision brings Gmail
7 ads in line with how we personalize ads for other Google products. Ads shown are based on
8 users’ settings. Users can change those settings at any time, including disabling ads
9 personalization. G Suite will continue to be ad free.³

10 19. Google represented that “free consumer Gmail users can remain confident that
11 Google will keep privacy and security paramount as we continue to innovate.” “No other email
12 service protects its users from spam, hacking, and phishing as successfully as Gmail.”⁴

13 20. Despite its representations to its users regarding the security and privacy of their
14 Gmail messages, Google gave hundreds of third-party developers—like marketing and data-mining
15 firms—*privileged access* to its users’ inboxes. Such access allowed the developers’ employees to
16 surreptitiously *read* Gmail user emails.⁵

17 21. Google never informed its users that it would give such access to developers, nor
18 did users give such informed consent to allow developers to read their emails.

19 22. Responding to user outcry about its latest violation of its own representations
20 regarding privacy, Google points the finger at its own users, foisting responsibility on them for
21 downloading apps that integrate with Gmail, and stating that, regardless, users should not be
22 concerned because the developers have been “vetted.”⁶

23 ³ Diane Greene, *As G Suite gains traction in the enterprise, G Suite’s Gmail and consumer Gmail to*
24 *more closely align*, Google Blog (June 23, 2017), <https://blog.google/products/gmail/g-suite-gains-traction-in-the-enterprise-g-suites-gmail-and-consumer-gmail-to-more-closely-align/>.

25 ⁴ *Id.*

26 ⁵ Liam Tung, *Who’s reading your Gmail? Not us, says Google, and we vet 3rd-party apps that do*,
ZDNet (July 4, 2018), <https://www.zdnet.com/article/whos-reading-your-gmail-not-us-says-google-and-we-vet-3rd-party-apps-that-do/>.

27 ⁶ Suzanne Frey, *Ensuring your security and privacy within Gmail*, Google Blog (July 3, 2018),
28 <https://www.blog.google/technology/safety-security/ensuring-your-security-and-privacy-within-gmail/>.

CLASS ALLEGATIONS

1
2 23. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4),
3 Plaintiffs seek certification of the following Class:

4 **All users of Gmail whom Google provided developers access to read the**
5 **contents of their emails.**

6 24. Excluded from the Class are Google and its officers, directors, and employees,
7 and any entity in which Google has a controlling interest; the affiliates, legal representatives,
8 attorneys, heirs, and assigns of Google; and any judge presiding over this matter and the members
9 of their immediate families and judicial staffs.

10 25. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The Class members
11 are so numerous and geographically dispersed that individual joinder of all Class members is
12 impracticable. Plaintiffs are informed and believe—based upon the publicly-available information
13 discussed herein—that there are millions of Class members, making joinder impracticable. Those
14 individuals’ identities are available through Google’s records, and Class members may be notified
15 of the pendency of this action by recognized, Court-approved notice dissemination methods—such
16 as through their Gmail accounts.

17 26. **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2)**
18 **and 23(b)(3).** Google has acted with respect to Plaintiffs and the other members of the proposed
19 Class in a manner generally applicable to each of them. There is a well-defined community of
20 interest in the questions of law and fact involved, which affect all Class members. The questions of
21 law and fact common to the Class predominate over the questions that may affect individual Class
22 members, including the following:

- 23 a. Whether Google’s Terms of Service adequately disclosed that it would be providing
24 privileged access to developers to its users’ Gmail inboxes;
25 b. Whether third-party developers were provided privileged access to Gmail users’
26 inboxes;
27 c. Whether Google is subject to liability for fraudulently concealing material facts from
28

1 Plaintiffs and the other Class members;

- 2 f. Whether Google is subject to liability for violating the Consumers Legal Remedies
3 Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*,
- 4 g. Whether Google’s conduct has violated the Unfair Competition Law (“UCL”), Cal.
5 Bus. & Prof. Code §§ 17200, *et seq.*,
- 6 h. Whether Google’s conduct has violated Cal. Penal Code § 502.
- 7 i. Whether Google has been unjustly enriched as a result of its fraudulent conduct,
8 such that it would be inequitable for Google to retain the benefits conferred upon it
9 by Plaintiffs and the other Class members;
- 10 j. Whether compensatory or consequential damages should be awarded to Plaintiffs
11 and the other Class members;
- 12 k. Whether punitive damages should be awarded to Plaintiffs and the other Class
13 members;
- 14 l. Whether restitution should be awarded to Plaintiffs and the other Class members;
15 and
- 16 m. Whether other, additional relief is appropriate, and what that relief should be.

17 **27. Typicality: Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’ claims are
18 typical of other Class members’ claims because Plaintiffs and Class members were subjected to the
19 same allegedly unlawful conduct and damaged in the same way.

20 **28. Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).**
21 Plaintiffs are adequate Class representatives because their interests do not conflict with the interests
22 of Class members who they seek to represent, Plaintiffs have retained counsel competent and
23 experienced in complex class action litigation, and Plaintiffs intend to prosecute this action
24 vigorously. The Class members’ interests will be fairly and adequately protected by Plaintiffs and
25 their counsel.

26 **29. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).**
27 The prosecution of separate actions by individual Class members would create a risk of inconsistent
28

1 or varying adjudications with respect to individual Class members that would establish
2 incompatible standards of conduct for Google. Such individual actions would create a risk of
3 adjudications that would be dispositive of the interests of other Class members and impair their
4 interests. Google has acted and/or refused to act on grounds generally applicable to the Class,
5 making final injunctive relief or corresponding declaratory relief appropriate.

6 30. Injunctive relief is particularly necessary in this case because Plaintiffs desire to
7 continue using Gmail's services, provided that Gmail make full disclosures and discontinue
8 providing developers with privileged access to their email inboxes.

9 31. **Superiority: Federal Rule of Civil Procedure 23(b)(3).** A class action is
10 superior to any other available means for the fair and efficient adjudication of this controversy, and
11 no unusual difficulties are likely to be encountered in the management of this class action. The
12 damages or other financial detriment suffered by Plaintiffs and Class members are relatively small
13 compared to the burden and expense that would be required to individually litigate their claims
14 against Google, so it would be impracticable for Class members to individually seek redress for
15 Google's wrongful conduct. Even if Class members could afford litigation, the court system could
16 not. Individualized litigation creates a potential for inconsistent or contradictory judgments and
17 increases the delay and expense to all parties and the court system. By contrast, the class action
18 device presents far fewer management difficulties and provides the benefits of single adjudication,
19 economies of scale, and comprehensive supervision by a single court.

20 **TOLLING OF APPLICABLE LIMITATIONS PERIODS**

21 32. To the extent Google seeks to benefit from any statute of limitations defense,
22 Plaintiffs assert that neither they nor the other Class members could have discovered through the
23 exercise of reasonable diligence that Google had provided developers with privileged access to their
24 email inboxes. Google did not publicly disclose this information, and—to the contrary—Google
25 made affirmative representations regarding privacy that did not provide users with any notice that
26 Google would provide third-party developers with access to their inboxes, allowing these
27 developers to read their emails.

1 40. Google provided such access while at the same time making representations
2 regarding privacy, concealing that it provided access to third-party developers to read Gmail users'
3 emails.

4 41. In so doing, Google exposed personal information to third-party developers,
5 violating its own privacy representations, and engaging in unfair, deceptive, and unlawful practices
6 as described herein.

7 42. Google's acts and practices violated the CLRA by

- 8 a. Representing that services have characteristics that they do not have;
- 9 b. Representing that services are of a particular standard, quality, or grade when they
10 were not;
- 11 c. Advertising services with intent not to provide them as advertised; and
- 12 d. Representing that the subject of a transaction has been supplied in accordance with a
13 previous representation when it has not.

14 43. Google's representations and omissions were material because they were likely
15 to deceive reasonable consumers.

16 44. Consumers provide data to Google in exchange for the use of Gmail for free.
17 For example, Gmail users provide information to Google allowing Google to provide targeted
18 advertisements to its users.

19 45. Gmail users never provided consent to Google to provide privileged access to
20 third-party developers.

21 46. Had Google actually provided notice to its users that it would allow third-party
22 developers to access users' Gmail inboxes and read their emails, containing personal information,
23 Gmail users would have decided to use other email applications or services, or would have
24 severely restricted their usage of Gmail.

25 47. As a direct and proximate result of Google's violations of California Civil Code
26 § 1770, Plaintiffs and Class members have suffered and will continue to suffer injury, ascertainable
27 losses of money or property, and monetary and non-monetary damages.

1 constitute other unlawful business acts and practices. Google's conduct is ongoing and continues to
2 this date.

3 64. Google violated § 17200's prohibition against unfair conduct by failing to inform
4 its users about the Gmail inbox access it provides to third-party developers. This conduct is
5 substantially injurious to consumers, exposes personal information to third parties without consent,
6 offends public policy, is immoral, unethical, oppressive, and unscrupulous as the gravity of the
7 conduct outweighs any alleged benefit. Google engaged in this conduct at the expense of its users'
8 rights when other, lawful alternatives were available (such as providing customers' with full
9 information about the type of access it would provide to developers, or not providing such access, at
10 all).

11 65. Google engaged in this conduct to gain an unfair commercial advantage over its
12 competitors, allowing developers to create services that integrate with users' inboxes, while at the
13 same time providing them with access that is unnecessary, and to the benefit of the developers, who
14 now have access to information that users would not otherwise provide.

15 66. Google's business practices, as alleged herein, constitute fraudulent conduct
16 because they were likely to deceive, and did deceive, Class members into continuing to use Gmail.

17 67. Google's representations and omissions—all which emanated from California—
18 were material because they were likely to deceive reasonable consumers.

19 68. California law prohibits unauthorized computer access and fraud pursuant to Cal.
20 Penal Code § 502.

21 69. As a result of Google providing access to third-party developers to users' email
22 inboxes, Google knowingly provided access to data to third-parties, without consent of those users,
23 for the purpose of taking, copying, and using information from a computer system or network, and
24 provided assistance and the means by which third-party developers could access this information.
25 As a result, Google violated Cal. Penal Code § 502.

26 70. As a direct and proximate result of Google's unfair, unlawful, and fraudulent acts
27 and practices, Plaintiffs and Class members were injured, exposing personal data to third-party
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1 developers without their consent, for the benefit of those developers and Google.

2 71. Google acted intentionally, knowingly, and maliciously to violate California's
3 Unfair Competition Law, and recklessly disregarded Plaintiffs and Class members' rights.

4 72. Plaintiffs and Class members seek all monetary and non-monetary relief allowed
5 by law, including restitution of all profits stemming from Google's unfair, unlawful, and fraudulent
6 business practices; declaratory relief; reasonable attorneys' fees and costs under California Code of
7 Civil Procedure § 1021.5; injunctive relief; and other appropriate equitable relief.

8 **FOURTH CLAIM FOR RELIEF**

9 **BAILMENT**

10 73. Plaintiffs, individually and on behalf of the Class, repeat and allege paragraphs 1-33,
11 as if fully alleged herein.

12 74. Plaintiffs and the other Class members provided, or authorized access to their
13 personal, private information to Google for the exclusive purpose of using Google's Gmail email
14 platform.

15 75. In allowing their private information to be accessed by Google, Plaintiffs and the
16 other Class members intended and understood that Defendants would adequately safeguard their
17 personal, private information.

18 76. Google accepted possession of Plaintiffs' and the other Class members' personal,
19 private information for the purpose of making available to Plaintiffs and the other Class members
20 Google's Gmail email platform.

21 77. By accepting possession of Plaintiffs' and the other Class members' personal,
22 private information, Defendants understood that Plaintiffs and the other Class members expected
23 Google to adequately safeguard their personal, private information and not allow access to
24 unauthorized third-parties. Accordingly, a bailment (or deposit) was established for the mutual
25 benefit of the parties. During the bailment (or deposit), Google owed a duty to Plaintiffs and the
26 other Class members to exercise reasonable care, diligence, and prudence in protecting their
27 personal, private information.

1 84. Google's intrusion upon Plaintiffs' and the other Class members' solitude, seclusion,
2 and private affairs is intentional. Google intentionally accessed, monitored, surreptitiously
3 collected, improperly gained knowledge of, reviewed, and/or maintained and/or allowed third-
4 parties to access, monitor, surreptitiously collect, improperly gain knowledge of, review, and/or
5 maintain Plaintiffs' and the other Class members' personal, private information contained in their
6 email inboxes.

7 85. The above-described intrusions are highly offensive to a reasonable person and
8 constitute an egregious breach of social norms. The highly offensive nature of Google's conduct is
9 evidence by, among other things, Google's promise to provide more privacy to Gmail users, and
10 countless studies, new stories, and articles condemning the surreptitious access and/or monitoring
11 of users' email inboxes. Google's conduct is even more highly offensive given the unknown extent
12 of the intrusion, as Google's conduct involves sharing access to Plaintiffs' and the other Class
13 members' email inboxes, which contain personal, private information, with potentially countless
14 third-parties, known and unknown, for undisclosed purposes, in perpetuity.

15 86. The highly offensive nature of Google's conduct is further supported by the
16 surreptitious methods Google uses to access and/or share access to Plaintiffs' and the other Class
17 members' personal, private information by invading their private and privileged communications.

18 87. Plaintiffs and the other Class members are harmed by Google's intrusion into their
19 private affairs and Google's sharing of access to Plaintiffs' and the other Class members' personal,
20 private information to third-parties, both known and unknown, for unauthorized use and
21 commercial exploitation.

22 88. Google's actions and conduct were a substantial factor in causing the harm suffered
23 by Plaintiffs and the other Class members.

24 89. As a direct and proximate result of Google's actions, Plaintiffs and the other Class
25 members seek injunctive relief to cease Google's unauthorized access and/or sharing of access of
26 Plaintiffs' and other Class members' personal, private information.

1 parties to access, monitor, surreptitiously collect, improperly gain knowledge of, review, and/or
2 maintain Plaintiffs' and the other Class members' personal, private information contained in their
3 email inboxes.

4 96. The above-described intrusions are highly offensive to a reasonable person and
5 constitute an egregious breach of social norms. The highly offensive nature of Google's conduct is
6 evidence by, among other things, Google's promise to provide more privacy to Gmail users, and
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9 of the intrusion, as Google's conduct involves sharing access to Plaintiffs' and the other Class
10 members' email inboxes, which contain personal, private information, with potentially countless
11 third-parties, known and unknown, for undisclosed purposes, in perpetuity.

12 97. The highly offensive nature of Google's conduct is further supported by the
13 surreptitious methods Google uses to access and/or share access to Plaintiffs' and the other Class
14 members' personal, private information by invading their private and privileged communications.

15 98. Plaintiffs and the other Class members are harmed by Google's intrusion into their
16 private affairs and Google's sharing of access to Plaintiffs' and the other Class members' personal,
17 private information to third-parties, both known and unknown, for unauthorized use and
18 commercial exploitation.

19 99. Google's actions and conduct were a substantial factor in causing the harm suffered
20 by Plaintiffs and the other Class members.

21 100. As a direct and proximate result of Google's actions, Plaintiffs and the other Class
22 members seek injunctive relief to cease Google's unauthorized access and/or sharing of access of
23 Plaintiffs' and other Class members' personal, private information.

24 101. As a direct and proximate result of Google's actions, Plaintiffs and the other Class
25 members have suffered injury and the significant risk of future harm, and are entitled to damages in
26 an amount to be proven at trial.

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